

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDRES MOSQUEDA SERRANO,

Petitioner,

No. CIV-S-02-0341 MCE KJM P

vs.

ANTHONY LAMARQUE,

Respondent.

ORDER

Petitioner, a state prisoner proceeding with counsel, has timely filed a notice of appeal of this court's March 30, 2005 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate

1 which specific issue or issues satisfy" the requirement. 28
2 U.S.C. § 2253(c) (3).

3 A certificate of appealability should be granted for
4 any issue that petitioner can demonstrate is "'debatable among
5 jurists of reason,'" could be resolved differently by a different
6 court, or is "'adequate to deserve encouragement to proceed
7 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.
8 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

9 Petitioner has made a substantial showing of the denial
10 of a constitutional right with respect to petitioner's claim that
11 he was denied due process and the right to confront witnesses
12 against him by the trial court's limitation of testimony
13 regarding the credibility of Angel Post. In all other respects,
14 petitioner has not made a substantial showing of the denial of a
15 constitutional right

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. Petitioner's request for a certificate of
18 appealability is issued with respect to petitioner's claim that
19 he was denied due process and the right to confront witnesses
20 against him by the trial court's limitation of testimony
21 regarding the credibility of Angel Post.

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1 2. In all other respects, petitioner's request for a
2 certificate of appealability is denied.

3 Dated: May 12, 2005

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5 /s/ Garland E. Burrell, Jr.
6 GARLAND E. BURRELL, JR.
7 United States District Judge
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